

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

FILED

APR 30 2013

CLERK, US DISTRICT COURT  
NORFOLK, VA

BENJAMIN WILLIAM FAWLEY,

Petitioner,

v.

HAROLD W. CLARKE, Director,  
Virginia Department of  
Corrections,

Respondent.

Case No.: 2:12-cv-400

FINAL ORDER

Before the Court is a Petition for a Writ of *Habeas Corpus* filed pursuant to 28 U.S.C. § 2254. ECF No. 14. The *pro se* Petitioner alleges violations of various rights concerning the Court of Appeals of Virginia's dismissal of his direct appeal.

On December 6, 2012, the Respondent filed a Rule 5 Answer, Motion to Dismiss, brief in support, and *Roseboro* Notice, ECF Nos. 23-26, and the Petitioner filed a reply and brief in opposition on January 10, 2013, ECF No. 32, as well as additional briefs in support of his Petition, ECF Nos. 33-34, 36. This case was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b), and Local Civil Rule 72 for a report and recommendation. The Report and Recommendation was filed on February 22, 2013, and the

Magistrate Judge recommended the Respondent's Motion to Dismiss be granted and the Petition be denied. ECF No. 35. By receiving a copy of the Report and Recommendation, the parties were advised of their right to file written objections to the Magistrate Judge's findings and recommendations.

On April 1, 2013, the Court received the Petitioner's objections, ECF No. 41, after the Magistrate Judge granted him an extension of time to file, ECF No. 40. The Respondent, however, has not responded to these objections, and the time to respond has lapsed. The Court also received a brief in support of the Petitioner's objections on April 15, 2013. ECF No. 42. Although this brief is untimely and was filed approximately two weeks beyond the date in which the Petitioner was ordered to file his objections, the Court has nonetheless reviewed this pleading in disposing of the instant Motion and Petition.

After reviewing the record and the Petitioner's objections, and having made *de novo* findings with respect to the portions objected to, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Magistrate Judge's Report and Recommendation filed on February 22, 2013, ECF No. 35, in its entirety as the Court's own opinion. The Court also **OVERRULES** the Petitioner's objections to the Magistrate Judge's November 9, 2012, Order. ECF Nos. 21-22.

Accordingly, the Court **ORDERS** the Respondent's Motion to Dismiss, ECF No. 23, be **GRANTED** and the Petition, ECF No. 14, be **DENIED** for the reasons stated in the Report and Recommendation, and further **ORDERS** judgment be entered in the Respondent's favor.

The Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty days from the date of entry of judgment. Because the Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), pursuant to Federal Rule of Appellate Procedure 22(b), the Court declines to issue a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to the Petitioner and counsel of record for the Respondent.

It is so **ORDERED**.

  
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Mark S. Davis  
United States District Judge

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Mark S. Davis  
United States District Judge

Norfolk, Virginia  
Date: April 30, 2013